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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,809	08/04/2003	Tsutomu Kiyono	116784	4610
25944	7590	08/01/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER QIN, JIANCHUN	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 08/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/632,809

Applicant(s)

KIYONO ET AL.

Examiner

Jianchun Qin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19, 21 and 23 is/are allowed.
- 6) ☒ Claim(s) 22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 22, 24, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamazaki et al. (U. S. Pat. No. 6499741).

Regarding claims 22 and 26, Yamazaki et al. teach a method and a storage medium for storing computer program instruction for performing the method, for playing a music game with a percussion instrument (col. 1, lines 16-20 and 26-32; col. 8, lines 1-6), comprising: providing the percussion instrument (Fig. 1; col. 6, lines 19-29) that is not a button; detecting that the percussion instrument is beaten in a game start acceptance state prior to starting the game (col. 1, lines 39-42; col. 6, lines 30-43); outputting a percussion instrument signal as a game start signal based on the detection (col. 1, lines 39-42; col. 6, lines 30-43); and starting the game operation when the percussion instrument signal is received (col. 1, lines 39-42; col. 6, lines 30-43).

Regarding claim 24, the teaching of Yamazaki et al. includes: providing a button that outputs a game start signal (col. 1, lines 58-65); and outputting the game start

signal when the button is operated in the game start acceptance state, wherein the game starts when at least one of the percussion instrument signal and the game start signal is received (col. 1, lines 39-42 and 58-65; col. 6, lines 30-43).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al.

Yamazaki et al. teach a method for playing a music game with a percussion instrument including the subject matter discussed above. Kitakaze et al. do not mention expressly: the percussion instrument is beaten by a drum stick.

In view of the teaching of Yamazaki et al., however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the invention of Yamazaki et al. to a percussion instrument that is a drum beaten by a drum stick, as an intended use of the claimed invention. It has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the

intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

***Allowable Subject Matter***

5. Claims 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19, 21 and 23 are allowed.

***Reasons for Allowance***

6. The following is a statement of reasons for the indication of allowable subject matter:

Please see Office action dated 10/17/2006 for reasons for allowance of claims 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19, 21 and 23.

***Response to Arguments***

7. Applicant's arguments received 06/26/07 with respect to claims 22 and 24-26 have been considered but are moot in view of the new ground(s) of rejection.

Claims 22 and 24-26 are rejected as new prior art reference (U. S. Pat. No. 6499741 to Yamazaki et al.) has been found to teach, either individually or in combination with other cited prior art references, the claimed invention recited in these claims. Detailed response is given in sections 2 and 4 as set forth above in this Office action.

***Prior Art Citations***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Tanaka et al. (U. S. Pub. No. 20030061932) is entitled to "Simple electronic musical instrument, player's console and signal processing system incorporated therein".

2) Nishimoto et al. (U.S. Pub. No. 20010034014 A1) is entitled to "Physical motion state evaluation apparatus".

3) Yanase (U.S. Pat. No. 6822148) is entitled "Electronic pad".

4) Yanase et al. (U.S. Pat. No. 20040016339) is entitled "Electronic pad with vibration isolation features".

***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8am - 5:30pm.

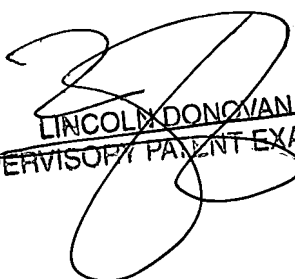
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jianchun Qin  
Examiner  
Art Unit 2837

JQ 

  
~~LINCOLN DONOVAN~~  
~~SUPERVISORY PATENT EXAMINER~~